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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of:

Applications of CHARTER COMMUNICATIONS,
INC., TIME WARNER CABLE INC., and
BRIGHT HOUSE NETWORKS, LLC for Consent To
Assign or Transfer Control of Licenses and
Authorizations

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WC Dkt. No. 16-197

**INDEPENDENT COMPLIANCE OFFICER'S REPORT ON CHARTER'S
ANNUAL INTERCONNECTION REPORT**

OCTOBER 16, 2017

Hon. Barbara S. Jones (Ret.)
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INTRODUCTION

On May 10, 2016, the Federal Communications Commission (“FCC” or “Commission”) issued an order (the “Merger Order”) approving the merger of Charter Communications, Inc. (“Legacy Charter”), Time Warner Cable Inc. (“Legacy TWC”), and Advance/Newhouse Partnership (“Legacy Bright House”) (as a combined entity, “Charter” or the “Company”), subject to certain conditions (the “Conditions”). Mem. Op. & Order, MB Dkt. No. 15-149, FCC 16-59, May 10, 2016. The Conditions are set forth in Appendix B of the Merger Order. To monitor and assess the Company’s compliance with the Conditions, Appendix B requires Charter to engage an Independent Compliance Officer (“ICO”). App’x B § IX(3). The ICO’s duties include preparing and submitting reports that detail the Company’s efforts to satisfy the Conditions. App’x B § IX(3)(e). The ICO is to submit such reports within 60 days of receiving the periodic reports filed by the Company pursuant to the Conditions. App’x B § IX(3)(e).

On August 17, 2016, the FCC appointed the Honorable Barbara S. Jones (ret.) as the ICO. Pub. Notice, WC Dkt. No. 16-197, DA 16-936. Members of the ICO’s firm, Bracewell LLP, and consultants at Guidepost Solutions, LLC are working at the ICO’s direction to assist her in the performance of her duties.

On August 16, 2017, Charter filed its first annual report (the “2017 Annual Report” or the “Report”) pursuant to the Settlement-Free Interconnection Condition (the “Interconnection Condition” or the “Condition”). This report addresses Charter’s progress on satisfying that Condition.

EXECUTIVE SUMMARY

Based on the ICO's assessment of information Charter has presented to the ICO, interviews the ICO has conducted of Charter personnel, and the ICO's review of documents and materials, the ICO believes that Charter is in compliance with the terms of the Interconnection Condition.

The remainder of this report proceeds in two parts. The first part sets forth the ICO's methodology for assessing Charter's compliance with the Interconnection Condition; the second part sets forth the ICO's observations and recommendations regarding Charter's compliance with the Condition.

METHODOLOGY

As stated in prior reports, the ICO's basic methodology for assessing compliance with each condition in the Merger Order—including the Interconnection Condition—involves the same fundamental process:

- 1) Provide Charter with information requests to obtain materials relevant to Charter's implementation and satisfaction of the Condition;
- 2) Meet with the Charter personnel involved in implementing the Condition to learn Charter's approach to satisfying the Condition and ask questions;
- 3) Review documents produced in response to the ICO's information requests and analyze those documents with the help of experts, if necessary;
- 4) Analyze Charter's filed reports in light of the information the ICO has received or obtained; and
- 5) Conduct field visits or independent checks as necessary to validate Charter's reported data.

The process is iterative. When presentations or interviews reveal the existence of additional relevant materials, the ICO transmits follow-up information requests to Charter. And

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when documents give rise to further questions, the ICO requests additional information in the form of interviews or written materials.

Consistent with the ICO's work plan, the ICO sent Charter her first set of document requests related to the Interconnection Condition on October 6, 2016. The ICO followed-up with additional requests on February 17, 2017 and August 16, 2017. The ICO held her first meeting with Charter personnel specific to the Condition on November 17, 2016.

In addition to the methodologies employed above, the ICO monitors public information related to Charter's compliance with the Interconnection Condition.

COOPERATION WITH THE ICO

Charter has been cooperative with the ICO with respect to her requests related to the Interconnection Condition.

COMPLIANCE WITH THE INTERCONNECTION CONDITION

The following are the ICO's observations and recommendations on Charter's compliance with the Interconnection Condition and the contents of the 2017 Annual Report.¹ As always, the observations and recommendations of the ICO are based on the ICO's knowledge and information at this point in time; the ICO's assessment of Charter's compliance with the Interconnection Condition will continue to be shaped by additional materials received and interviews conducted.

¹ On August 1, 2017, Charter informed the FCC that it interpreted the Condition to contain a scrivener's error—specifically, that Section III(3)(d) was intended to call for a report from the *Company* rather than the ICO. The ICO concurred with Charter's assessment. Charter further informed the FCC that, "unless the FCC directs Charter to do otherwise, Charter will file a report under Section III(3)(d) from the Company Compliance Officer." See Letter from John L. Flynn to Marlene H. Dortch, Secretary, FCC (Aug. 1, 2017). The FCC did not provide contrary direction and, accordingly, Charter's Company Compliance Officer ("CCO") filed the 2017 Annual Report in satisfaction of Section III(3)(d).

I. INTERCONNECTION CONDITION

A. STATEMENT OF THE CONDITION

1. Introduction. This Condition ensures that the Company will fulfill Charter's commitment to offer interconnection between its IP network and other large IP networks, including backbone Internet providers, content delivery networks (CDNs), and edge providers. After a thorough review of the record, we find that the transaction will likely increase edge providers' interconnection costs, and New Charter will gain the ability to harm online video distributors. In order to protect edge providers from transaction-specific harms we adopt this Condition. We further find that granting the Application subject to the interconnection-specific Condition set forth here, which renders the Applicants' commitments meaningful and enforceable, is in the public interest.
2. Conditions.
 - a. Commencing on the Closing Date, and ending on the seventh anniversary of the Closing Date, or as otherwise adjusted by the Commission under the terms of this Appendix B, the Company shall enter into an Interconnection Agreement consistent with the terms set forth in Attachment 1 with any Person that qualifies under the terms of Attachment 1.
 - b. The Company shall post Attachment 1 on a publicly accessible webpage, available without charge to a Person viewing it, associated with its networks operations group.
 - c. Individual Contracting. Nothing in this Condition precludes the Company and a Person from voluntarily entering into an Interconnection Agreement with different terms than elaborated in this Condition. However, any such Interconnection Agreement with a Person that qualifies under the terms set forth in Attachment 1 shall:
 - i. Not contain terms that are materially less favorable to the Interconnection Party than the correlating terms set forth in Attachment 1;
 - ii. Not lower the data transfer growth rates specified in the "Suspension" portion of Attachment 1 (i.e., "10% or more in any calendar month compared to any prior calendar month; or at least 8% per month over a rolling 6 month period; or 5.9% over a rolling 6 month period for a company whose traffic constitutes 30% or more of the total traffic in the dominant direction on New Charter's Network");
 - iii. Permit "any portion of that incremental traffic that was previously being delivered to New Charter by third parties" to be exempt from calculating the data transfer growth rate, including the rates in the "Suspension" portion of Attachment 1, and permit that in the event that the Interconnection Party begins conveying data to or from New Charter that was previously conveyed to or from New Charter by a

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third party, the parties shall account for this additional data transfer as the Interconnecting Party's own for the purposes of measuring growth rates during subsequent measuring periods; and

- iv. Not limit the relief available to the Interconnection Party in the event of a breach, except that an Interconnection Agreement may include standard contractual provisions limiting the types of damages available for breach of contract (e.g., by limiting the availability of consequential, incidental, general, indirect, or punitive damages).
- d. Points of Presence. The Company may designate additional Points of Presence, but shall not remove any Points of Presence from the list contained in Attachment 1.
- e. Enforcement.
 - i. Any Person seeking an Interconnection Agreement with the Company who is aggrieved by a failure by the Company to comply with this Condition, including the terms of Attachment 1, may seek redress from the Commission.²
 - ii. In the event that a dispute arises between the parties to an Interconnection Agreement to a contract entered into pursuant and subject to this Condition, that dispute shall be addressed to a court of competent jurisdiction or as otherwise provided in said Agreement.
- 3. Reporting. Within ninety (90) days after the Closing Date, and quarterly thereafter, the Company shall submit until the seventh anniversary of the Closing Date, or as otherwise adjusted by the Commission under the terms of this Appendix B, ("Interconnection Reporting Period") a detailed report that sets forth the following information:
 - a. All Interconnection Parties that have reached Interconnection Agreements with the Company under the terms of this Condition;
 - b. Information for each Interconnect Exchange Point, which shall include, as of the date that is the last day of the calendar quarter preceding the Report:
 - i. Each Interconnection Party interconnected with the Company at that Interconnect Exchange Point;
 - ii. For each Interconnection Party, the aggregate link capacity between the Company and each Interconnection Party at that Interconnect Exchange Point;

² For example, Persons seeking redress may file with the Commission a Petition for Declaratory Ruling pursuant to 47 CFR § 1.2 or a Section 208 formal complaint pursuant to 47 CFR §§ 1.720-1.736, as appropriate. There may also be instances where Persons may avail themselves of the Open Internet procedures for formal complaints, 47 CFR §§ 8.12-8.17, which govern, *inter alia*, certain Internet traffic exchange disputes (see *Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd 5601, 5713 para. 252 (2015)).

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- iii. For each Interconnection Party, traffic exchange, in each direction, as measured by the 95th percentile method; and
 - iv. For each port through which traffic is exchanged with an Interconnection Party, the percentage time within the reporting period that the port was over 75% capacity in the dominant direction.
- c. Reports shall be filed in machine readable format, and shall include, at a minimum, the following information, in a similar format as shown below:

Chicago POP		
Interconnection Party A: 10G (Jan. 1, 2015 to Mar. 30, 2015)		
Month	Upstream	Downstream
Jan. 2015	1.53 Gbps	5.71 Gbps
Feb. 2015	1.62 Gbps	5.92 Gbps
Mar. 2015	1.75 Gbps	6.17 Gbps
Interconnection Party B: 240 G (Jan. 1, 2015 to Mar. 15, 2015) 300 G (Mar. 16, 2015 to Mar. 30, 2015)		
Month	Upstream	Downstream
Jan. 2015	2.53 Gbps	165.5 Gbps
Feb. 2015	3.27 Gbps	175.2 Gbps
Mar. 2015	3.41 Gbps	180.3 Gbps

- d. In addition, for the duration of the Interconnection Reporting Period, the Company shall submit annually to the Commission's Office of General Counsel a report from the Independent Compliance Officer addressing whether the Company has complied with this Condition. The first such report shall be submitted no later than ninety (90) days after the date that is one year after the Closing Date.
4. Disclosure of Internet Interconnection Agreements. Commencing on the Closing Date and ending on the seventh anniversary, or as otherwise adjusted by the Commission under the terms of this Appendix B, that date, absent any extension under the terms of this Appendix B, the Company shall comply with the following:
- a. The Company shall submit all Interconnection Agreements within thirty (30) days of execution, in accordance with the filing and service requirements set forth in Section IX.5 herein, entered for the exchange of Internet traffic, between the Company's network that carries Broadband Internet Access Service traffic and the Interconnection Party, at Interconnect Exchange Points located within the United States, unless the aggregate capacity of the interconnection links between the Company and an Interconnection Party is less than 30 Gbps.
 - b. Within thirty (30) days of the Closing Date, in accordance with the filing and service requirements set forth in Section IX.5 herein, the Company shall submit all existing agreements for the exchange of traffic, between the Company's network that carries Broadband Internet Access Service traffic and an Interconnection Party, at Interconnect Exchange Points located within

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the United States, unless the aggregate capacity of the interconnection links between the Company and an Interconnection Party is less than 30 Gbps.

App'x B § III.

II. OBSERVATIONS

A. Charter's Approach to Satisfying the Condition

In addition to the CCO, the core team responsible for ensuring Charter's compliance with the Interconnection Condition includes [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

[END HIGHLY CONFIDENTIAL INFORMATION]

At the outset, the ICO believes it is important to explain that Charter's general approach to satisfying the Condition has been to [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

[END HIGHLY CONFIDENTIAL INFORMATION] The ICO recognizes that in taking this approach Charter has gone substantially beyond the requirements of the Condition.

B. The Specific Requirements of the Condition

The remainder of this report addresses Charter's compliance with each of the specific requirements of the Interconnection Condition.

1. Section III(2)(a): Entering into Agreements Consistent with Attachment 1 with Qualified Persons

The first requirement of the Condition is that Charter enter “into an Interconnection Agreement consistent with the terms set forth in Attachment 1 with any Person that qualifies under the terms of Attachment 1.” App’x B § III(2)(a). Assessing compliance with this provision involves ensuring both (i) that Charter is permitting all parties that satisfy the terms of Attachment 1 to interconnect, and (ii) that the terms of the agreements governing such interconnection relationships are consistent with Attachment 1. The ICO believes Charter is in compliance with this provision of the Condition.

a. Requests for Interconnection

Charter’s process for determining eligibility to peer under the terms of the Interconnection Condition is as follows. When a request for interconnection is made, **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

[END HIGHLY CONFIDENTIAL INFORMATION]

b. Executed Agreements

As set forth above, since the closing date, Charter has entered into interconnection agreements with **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

³ In her first set of document requests related to the Interconnection Condition, the ICO requested that Charter provide her with documentation regarding all requests for interconnection, including all requests sent to interconnection@charter.com. The request was continuing in nature and was repeated in the ICO's February 17, 2017 and August 16, 2017 document requests. Charter made several productions in response to those requests. On September 8, 2017, however, Charter informed that ICO that **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

CONFIDENTIAL INFORMATION]

[END HIGHLY

[END HIGHLY

CONFIDENTIAL INFORMATION] Each of these agreements is examined in detail in section II(B)(3) below.

2. Section III(2)(b): Public Posting of Attachment 1

The next requirement of the Interconnection Condition is that Charter “post Attachment 1 on a publicly accessible webpage, available without charge to a Person viewing it, associated with its networks operations group.” App’x B § III(2)(b). The ICO has confirmed that Attachment 1 is publicly available, without charge, on the IP Interconnection & Peering Policies page of Charter’s website.⁴

3. Section III(2)(c): Individual Contracting

The Interconnection Condition permits Charter to enter into interconnection agreements that differ from Attachment 1 to the Condition as long as the agreement adheres to certain requirements. *See* App’x B § III(2)(c). As discussed above, since the closing date Charter has entered into [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

⁴ *See* https://www.spectrum.com/content/dam/spectrum/residential/en/pdfs/policies/160525_Attachment_1_Charter_Communications_IP_Interconnect_Offer_and_Requirements.pdf; *see also* <https://www.spectrum.com/policies/ip-interconnection.html> (last visited October 9, 2017).

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[END

HIGHLY CONFIDENTIAL INFORMATION]

4. Section III(2)(d): Points of Presence

The Interconnection Condition prohibits Charter from removing any of the ten POPs listed in Attachment 1. *See* App'x B § III(2)(d). The ICO has confirmed with Charter that those ten POPs remain in existence and are operational.

The ICO separately notes that in order to satisfy the terms of Attachment 1, an entity must interconnect with Charter at eight or more of the ten listed POPs. *See* App'x B at Att. 1. Through interviewing Charter personnel, [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

[END HIGHLY CONFIDENTIAL INFORMATION] This approach is consistent with Charter's general policy of offering settlement-free peering.⁵

5. Section III(4)(a) & (b): Submission of Interconnection Agreements

The Interconnection Condition requires that within 30 days of execution:

The Company shall submit all Interconnection Agreements . . . entered for the exchange of Internet traffic, between the Company's network that carries Broadband Internet Access Service traffic and the Interconnection Party, at Interconnect Exchange Points located within the United States, unless the aggregate capacity of the interconnection links between the Company and an Interconnection Party is less than 30 Gbps.

⁵ [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

CONFIDENTIAL INFORMATION]

[END HIGHLY

App'x B § III(4)(a). As discussed above, Charter has submitted **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

[END HIGHLY CONFIDENTIAL INFORMATION] There are, therefore, no additional interconnection agreements to disclose under Section III(4)(a).

The Interconnection Condition also requires that within 30 days of the closing date:

[T]he Company shall submit all existing agreements for the exchange of traffic, between the Company's network that carries Broadband Internet Access Service traffic and an Interconnection Party, at Interconnect Exchange Points located within the United States, unless the aggregate capacity of the interconnection links between the Company and an Interconnection Party is less than 30 Gbps.

App'x B § III(4)(b). On June 17, 2016, Charter timely filed its existing interconnection agreements with the FCC pursuant to this requirement (the "June 2016 Filing"). The June 2016 Filing contained agreements between **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]**

In order to confirm the completeness of Charter's June 2016 Filing, the ICO compared the parties identified in that filing with the contents of Charter's July 29, 2016 first quarterly interconnection report (the "Q2 2016 Report"). *See* App'x B § III(3). The ICO's review revealed that some parties identified in the June 2016 Filing were not included in the Q2 2016 Report, and

⁶ As explained in Charter's October 6, 2016 letter to the FCC, **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

[END HIGHLY CONFIDENTIAL INFORMATION]

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vice versa. As described below, Charter has provided appropriate explanations for the differences identified by the ICO between the two filings.

First, the ICO identified **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

⁷ Charter informed the ICO that its current policy **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

[END HIGHLY CONFIDENTIAL INFORMATION]

[END

HIGHLY CONFIDENTIAL INFORMATION]

Accordingly, the ICO believes that Charter has filed all necessary interconnection agreements and is in compliance with this requirement of the Condition.

CONCLUSION AND RECOMMENDATIONS

The ICO believes that Charter is in compliance with the Interconnection Condition, and Charter has responded to the requests for clarification noted above to the ICO's satisfaction. The ICO commends Charter for going beyond the terms of the Condition, **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

INFORMATION] **[END HIGHLY CONFIDENTIAL**